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WSHU 2047.1
PATENT

EV 695258598 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Pampee P. Young et al.

Art Unit 1633

Serial No. 10/616,821

Filed July 10, 2003

Confirmation No. 2687

Examiner: Li, Qian Janice

For PROMOTION OF NEOVASCULARIZATION USING BONE MARROW-DERIVED ENDOTHELIAL-PROGENITOR CELLS

February 24, 2006

RESPONSE TO RESTRICTION/ELECTION REQUIREMENT

TO THE COMMISSIONER FOR PATENTS,

SIR:

This letter is in response to the Office action of January 24, 2006. Reconsideration is requested of the restriction of the claims of Group I (claims 10-13) from Group II (claims 14-18). Applicants acknowledge the statement regarding linking claims 1-9 and 19-29, and that upon the allowance of the linking claims, the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application.

According to 35 U.S.C. §121, a restriction is proper only if there are at least two independent and distinct inventions. Furthermore, “[i]f the search and examination of an entire application can be made **without serious burden**, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”¹

In this case, restriction is not proper. Claims 10-13 are directed to a method of treating a congenital protein deficiency in a subject, wherein the method comprises administering to the subject endothelial progenitor cells that

¹ MPEP § 803 (emphasis added).

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comprise a gene encoding a functional form of the protein responsible for said congenital deficiency at a stage of the subject's life at which non-pathologic vasculogenesis occurs, wherein the congenital protein deficiency is a blood protein disorder. Claims 14-18 are directed to the same method, wherein the congenital protein deficiency is a lysosomal storage disease.

Groups I and II have a prominent common element, i.e., administration of endothelial progenitor cells that comprise a gene encoding a functional form of the protein responsible for a congenital deficiency that is being treated.

Moreover, both Groups were classified not only in the same class (424) but also in the same subclass (93.2). Therefore, any search of the prior art and examination involving the claims of Group I will necessarily co-extend with the search and examination of Group II. In view of this, Applicants believe that the examination of the entire application may be made without serious burden and that the claims of Groups I and II should be examined together in accordance with MPEP § 803.

Subject to the foregoing traverse, Applicants hereby elect to prosecute the claims of Group I, claims 10-13, directed to a method of treating a blood protein disorder.

With respect to the election of species requirement, Applicants hereby elect a) Hemophilia A as a blood protein disorder, b) coagulation factor VIII as a protein responsible for said disorder, and c) vascular endothelial growth factor (VEGF) as an endothelial cell mitogen. Claims 10-11 from group I and linking claims 1-9 and 19-29 read upon the elected species.

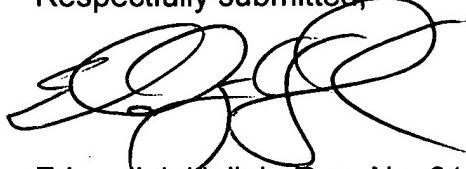
According to M.P.E.P. §809.02(c), an examiner's action subsequent to an election of species should include a complete action on the merits of all claims readable on the elected species and according to M.P.E.P. §809.02(e), whenever a generic claim is found to be allowable in substance, action on the species claims shall thereupon be given as if the generic claim were allowed. Thus, if it is determined that the elected species is patentable, it is incumbent upon the Office to search additional species that fall within any allowable generic claims.

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Applicants reserve the right to file divisional applications directed to the subject matter of the non-elected claims.

The Commissioner is hereby authorized to charge any underpayment and credit any overpayment of government fees to Deposit Account No. 19-1345.

Respectfully submitted,



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